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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-983
STATE OF WASHINGTON, *et al.*,
Petitioners,
—v.—
WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION, *et al.*,
Respondents.

No. 78-119
STATE OF WASHINGTON, *et al.*,
Petitioners,
—v.—
UNITED STATES OF AMERICA, *et al.*,
Respondents.

No. 78-139
PUGET SOUND GILLNETTERS ASSOCIATION, *et al.*,
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—v.—
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, *et al.*,
Respondents.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, AND THE NATIONAL CONGRESS OF AMERICAN INDIANS FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

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The American Civil Liberties Union, the American Civil Liberties Union of Washington, and the National Congress of American Indians respectfully move, pursuant to this Court's Rules, for leave to file the within brief. Counsel for the Respondents United States and Indian Tribes and Petitioner State of Washington have consented to the filing of this brief; counsel for the Commercial Passenger Fishing Vessel Association, the Gillnetters Association, and the Purse Seiners Association have refused consent.

The American Civil Liberties Union is a nationwide, non-partisan organization of over 200,000 members, and the American Civil Liberties Union of Washington is its affiliate operating in Washington State. The ACLU is dedicated to preserving and defending rights secured by the Constitution of the United States, and protecting the power of federal courts as the primary guarantors of those rights.

The National Congress of American Indians is the oldest and largest advocacy organization for American Indians in the United States. Comprised of 160 Indian tribes throughout the country, the NCAI seeks to preserve and protect rights under Indian treaties with the United States and to promote the common welfare of American

Indians.

These cases raise questions regarding treaty interpretation in which the NCAI has a particular interest. But they also raise a broader, more fundamental question concerning the continued efficacy of federal courts in protecting the rights of all Americans whether the recalcitrance of state officials and state courts who oppose federally guaranteed rights can prevent those rights from being enforced. Unless firmly rejected, the doctrine of interposition adopted sub silentio by state officials and the state courts here will hinder the vindication of these and other statutory, treaty, and Constitutional rights for years to come. Just as the ACLU has opposed state interference with the Constitutional rights of school children in the last two decades, we submit, with the NCAI, this brief in support of the historic remedial power of Article III courts.

Respectfully submitted,

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Interest of Amici

The interest of amici appears in the foregoing motion.

Statement of the Case

Amici adopt and rely on the statements of the case set out in the Briefs for the United States and the Respondent Indian Tribes.

Summary of Argument

The District Court correctly interpreted and applied the critical provisions of the treaties at issue here. Those provisions are to be read in light of the purposes for which fishing rights were reserved, and the circumstances of the negotiating parties. So construed, the reservations of fishing rights were designed to secure for the tribes an economy and culture based on fishing (Point I.A.). Actions of the state and of commercial fishermen, however, have violated those reserved rights, in some

cases almost completely preventing the Indians from catching any salmon at all. (Point I.B.). Accordingly, the District Court found it necessary to allocate salmon between the two parties - the treaty tribes, and the non-treaty fishermen (Point I.C.). That allocation does not violate the Equal Protection Clause, because classifications on the laws of tribal membership are political, not forbidden racial, distinctions. State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, No. 77-388, 47 U.S.L.W. 4111, 4121 (January 16, 1979) (Point I.D.).

In light of the demonstrated recalcitrance of state officials, the District Court did not abuse its equitable discretion or violate constitutional requirements by enjoining the state from interfering with the court-ordered allocations (Point II). If necessary to effectuate its decisions, the court had indisputable power to enjoin state officials notwithstanding contrary provisions of state law. North Carolina Board of Education v. Swann, 402 U.S. 43 (1971) (Point II.A.). Nor is that power thrown into doubt by the Tenth Amendment or generalized principles of federalism. Where, as here, a federal court precisely tailors its remedy to

restore victims of illegal conduct to their full rights, and finds that displacement of local authorities is necessary to remedy the violation, such displacement is permissible. Hutto v. Finney, 57 L.Ed.2d 522 (1978); Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977) (Point II.B.).

Finally, the judgments of the Washington courts in No. 77-983 must be reversed. The Supremacy Clause forbids state officials and state courts from relying on provisions of state law to block enforcement of federally protected rights. Abelman v. Booth, 62 U.S. (21 How.) 506 (1859) (Point III).

ARGUMENT

I. THE DECISION IN UNITED STATES v. WASHINGTON CORRECTLY INTERPRETED AND APPLIED RIGHTS RESERVED IN THE TREATIES.

The Court has held that Indian rights reserved by treaty should be construed as sufficient in scope to fulfill the purposes for which they were reserved. These purposes can be found by examining the intentions and understandings of the parties. "How the treaty in question was understood may be gathered from the circumstances." United States v. Winans, 198 U.S. 370, 381 (1905).

To find the intention and understanding of the parties as to the treaty reservation of fishing rights, the district court sifted thousands of pages of contemporaneous documents and records and studied the reports and testimony of expert witnesses. It found that the dominant purpose of the treaty was to enable Indians to continue fishing as they had been, but to allow non-Indians to fish as well. Fulfillment of this purpose today means that Indians cannot be prevented from access to any more than half of the fishery in which their rights were reserved.

A. The Purpose and Intent of the Treaties Was to Secure the Tribes' Ability to Continue an Economy and Culture Based on Fishing.

In the mid-nineteenth century, the United States sought out the Indians of the Northwest in order to persuade them to relinquish their claims to what we now know as the State of Washington. Non-Indians were settling there in increasing numbers, and the Indians' agreement was sought to prevent friction and facilitate settlement. National policy dictated that Indian title should be extinguished by negotiation rather than conquest. Joint App. 108-09; Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1823). Treaties were concluded in 1854 and 1855 by which the Indians gave up their rights to most of the area.

Consistent with the objectives of the United States, Indians were to be provided with places where they could reside permanently with means to remain economically self-sustaining, and maintain their way of life. These purposes are addressed in most treaties or documents by which Indian rights or lands were reserved. See, e.g., The Kansas Indians, 72 U.S. (5 Wall.) 737, 752, 754 (1886); Winters v. United States, 207 U.S. 564 (1908); Alaska Pacific Fisheries v. United States, 248 U.S. 78, 88-89 (1918);

United States v. McGowan, 302 U.S. 535, 537 (1938); United States v. Shoshone Tribe, 304 U.S. 111, 117-18 (1938); Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685, 686 (1965); Menominee Tribe v. United States, 391 U.S. 404, 406 (1968); McClanahan v. Arizona Tax Commission, 411 U.S. 164, 174 (1973).

Indian treaties have been construed consistently with these purposes. Thus, in Alaska Pacific Fisheries v. United States, supra, this Court sought out the purposes of a reservation of the Annette Islands in Alaska for the Metlakahtla Indians. The islands had been selected because the Metlakahtlans "were largely fishermen and hunters, and. . . the fishery adjacent to the shore should afford them a primary means of subsistence and a promising opportunity for industrial and commercial development." 248 U.S. at 88. Accordingly, although the statute set aside only "the body of lands known as the Annette Islands," the Court concluded that Congress and the Indians intended that the adjacent fishing grounds be included in the reservation. The Court required that an otherwise lawful fish trap operated by non-Indians in the area which would "materially reduce the natural supply of fish accessible to the Indians"

be removed, because it encroached upon the exclusive fishery implied in the Indians' reservation of adjacent waters. 248 U.S. at 87.

Similarly, the Northwest Indian treaties reflect the unique circumstances of the Pacific Northwestern tribes. Because much of the region is unsuited to agriculture, it was not practical to provide the Indians with reservations of large parcels of land where they could be self-sufficient. Moreover, fishing was necessary not only for food and trade, but for the cohesion of the Indians' culture. Consequently, the treaties made special provision for continuing the pursuit of fishing by reservations of another kind:

> Reservations were not of particular parcels of land, and could not be expressed in deeds. . . . The reservations were in large areas of territory. . . . There was an exclusive right of fishing reserved within certain boundaries. There was a right outside those boundaries reserved "in common with the citizens of the territory." United States v. Winans, 198 U.S. 370, 381 (1905).

The findings of the District Court, supported by a vast array of documents and reports of experts, reveal the tremendous importance of these reservations of fishing rights to the Indians at the time of the

treaties. (Joint App. 99-113). Fearing that they would be unable to continue using their fishing places as they had in the past, the Indians were reluctant to give up their claims to the territory, which now comprises much of the State of Washington. The Indians offered to cede half their land, retaining the rest to continue their traditional fishing and food gathering, but they were advised by the United States negotiators that they would fare better ceding virtually all of their land and retaining small tracts for homes and the right to fish throughout the ceded areas. (Joint App. 330-31). 1/

The United States negotiators knew that the Indians had engaged in a substan-

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1/ The treaty minutes quote an Indian negotiator as saying:

> I wish to speak my mind as to selling the land - Great Chief. What shall we eat if we do so? Our only food is berries, deer and salmon. Where then shall we find these? I don't want to sign away all my land. Take half of it and let us keep the rest. I am afraid that I shall become destitute and perish for want of food.

After being assured that the small land reservation was only for their homes, and that they would remain free to fish as before at all their usual places, the Indians assented to the treaty. See Skokomish v. France, 320 F.2d 205, 210 (9th Cir. 1963).

tial trade in fish among tribes over a wide area historically, and at the time of the treaties they were the major supplier of fish to other non-Indians. (Joint App. 102, 329, 334, 369-372, 374). The negotiators recognized the contribution of Indian fishers to the territorial economy and believed that the Indians should be encouraged to continue trading in fish. (Joint App. 102, 333-34, 382).

Besides sharing the intention that Indian fishing should continue as an important economic activity, both the government and Indian negotiators understood that fishing was an essential ingredient of Indian social structure and culture. Seasonal movements, living patterns, religious activity, and family and community organization centered around the fish resource. (Joint App. 100-01, 365, 368-69, 375, 377-79, 382). Neither party to the negotiations intended that allowing non-Indians to fish would interfere with traditional Indian fishing or perceived any need for restricting Indian fishing. (Joint App. 113, 383).

B. Non-Indian Fishing and State Law Have Operated to Defeat the Purposes of the Treaties.

The growth of a lucrative non-Indian fishing industry later brought pressures to bear on what had seemed to be an inexhaustible resource. At first, Indians were blocked from access to their fishing places because land ownership had been transferred to non-Indians. This problem was confronted in United States v. Winans, supra, where the Court held that the treaties reserved to the Indians a right of access to their fishing places, and rejected a lower court holding that Indians' rights under the treaty were no greater than the rights of other inhabitants. Then, as a state regulatory regime grew and non-Indians began using other techniques and gear, most of the fish were captured by others before reaching Indian fishing areas. Fish that reached the Indians were typically considered necessary for spawning escapement and therefore unavailable to Indian fishers for conservation reasons. The Court has encountered this second problem - limitations upon Indian treaty fishing resulting from state regulatory schemes and non-Indian fishing - more recently, and has invalidated restrictions on Indian treaty fishing, and

preemption of fishing by non-Indians, except where strictly necessary in the interests of conservation. 2/

Washington has urged that the only special treaty fishing right enjoyed by Indians outside their reservations is the right of access to their fishing places enforced in Winans. But physical access is meaningless if there are few or no fish there to be harvested. Non-Indians fishing under Washington law have been able to interdict almost all of the fish available for harvest before they reached usual and accustomed Indian fishing places. (Joint App. 122, 179-80). Remaining fish have been denied Indian fishers on conservation grounds. (Joint App. 180). At the time of the trial below, only about 5% of the harvest was being taken by Indians at their

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2/ See, e.g., Tulee v. Washington, 315 U.S. 681 (1942) (state license fee may not be charged as a condition on the exercise of Indian treaty rights); Puyallup Tribe v. Department of Game, 391 U.S. 392 (1968) (treaty fishing may be limited by state law only if necessary for conservattion); Department of Game v. Puyallup Tribe, 414 U.S. 44 (1973)(limitation to hood and line fishing for steelhead, preventing commercial net fishing by the Indians, invalidated as discriminatory against Indian treaty rights); Puyallup Tribe v. Department of Game, 433 U.S. 164 (1977)(approving allocation of 45% of fish to Indian fishermen on one river as a means of avoiding discrimination). See also Antoine v. Washington, 420 U.S. 194 (1975).

off-reservation "usual and accustomed" grounds. Exhibit PL-74. 3/ As the Court of Appeals concluded,

> In treating treaty Indian fishermen no differently from other citizens of the state, the state has rendered the treaty guarantees nugatory.
>
> 520 F.2d at 685.

This result, no less than that in Winans, "is certainly an impotent outcome to negotiations and convention, which seemed to promise more and give the word of the Nation for more." 198 U.S. at 380.

The Court in Winans condemned monopolization of the fishery by non-Indians licensed by the state to operate a fish wheel which intercepted most of the fish before Indians had an opportunity to take them. The regulatory scheme struck down by the courts below had the same effect, and was equally objectionable. The fishery as it existed prior to the decision below was not the "in common" fishery intended by the treaties. If it were, then the Indians reserved nothing "but

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3/ This figure includes "special" Indian treaty fisheries which the Department of Fisheries had instituted to assure tribes of a "fair share" of the fishery (Joint App. 132, 136, 143, 152, 175-76) as well as harvests by tribes with usual and accustomed places located in areas where non-Indian harvests could not so completely deplete the runs. (Joint App. 164).

such as they would have without the treaty," a result held impermissible in Winans. 198 U.S. at 380.

C. The District Court Correctly Enforced the Purpose of the Treaties by Allocating Fishing Opportunity.

In Department of Game v. Puyallup Tribe, 414 U.S. 44 (1973) (Puyallup II), this Court proposed that the available fish be "fairly apportioned" between Indian and non-Indian fishing. Subsequently, a state court allocation of 45% of the Puyallup fishery to the treaty fishers was sustained in Puyallup Tribe v. Department of Game, 433 U.S. 165 (1977) (Puyallup III). Here, the District Court found that to give the intended meaning to the treaty reserved rights, Indians must have an opportunity to fish for up to half the harvestable fish destined for their usual and accustomed places. 4/ The District Court's construction of the Indian rights reserved in the treaties comports

4/ The Court excluded from the allocation of opportunity fish needed for escapement, fish taken pursuant to a separate treaty right on the reservations, and fish taken off-reservation for subsistence and ceremonial purposes. The latter exception was not challenged on appeal. 520 F.2d at 690.

with the evidence and applicable legal principles.

Reserved rights to natural resources are broad enough to encompass the full extent of the Indians' reasonable needs. As the Ninth Circuit observed, Indian water rights cases furnish the closest legal analogy. Even where they are implied, rather than (as here) express, the Court has held that reserved rights can only be limited in amount to the total reasonably required by the needs of the reserving party from time to time indefinately in the future. See Arizona v. California, 373 U.S. 546 (1962). Reserved rights are otherwise unlimited, absent a specific qualification, Alaska Pacific Fisheries v. Unites States, supra, even where enforcement of the reserved right has an adverse effect on others. Id.; Winters v. United States, 207 U.S. 564 (1908)(land reservation carries implied reservation of water sufficient for full Indian needs, notwithstanding competing needs of non-Indians).

Here, the reservation was express, but it was also qualified by a grant of rights to non-Indians to fish "in common" with Indians. Therefore, Indian rights are non-exclusive. To what extent does this allow them to be limited?

The District Court held that Indian treaty fishing could be limited by:

(a) The number of fish required for spawning escapement and any other requirements established to be reasonable and necessary for conservation, and

(b) The number of harvestable fish non-treaty fishermen may take at the tribes' "usual and accustomed grounds and stations" while fishing "in common with" treaty right fishermen.

(Joint App. 88).

The first limitation on reserved "in common" Indian treaty fishing rights had been announced in Puyallup I. The second was added in recognition of the treaty parties' understanding of the"in common" grant. The Court found that the tribes attached primary significance to the need for fish for traditional tribal ceremonial and personal subsistence and would not have granted away their right to meet these needs. These tribal needs, like needs for spawning escapement, were to be deducted before determining the scope of the fishing right granted to the government for the benefit of non-Indians. The remainder, "harvestable fish," which are available for commercial fishing, were to be equally available to treaty and non-treaty fishers. Thus, it was decreed that

"non-treaty fishermen shall have the opportunity to take up to 50% of the harvestable number of fish that may be taken by all fishermen at usual and accustomed grounds and stations." (Joint App. 89).

At the time of the treaties no one anticipated any restriction or interference in seeking the abundant fish resource. (Joint app. 113). The District Court had to determine what limitations would be compatible with the purposes of the Indians' reservations of fishing rights, given the unforseen competition for fish. Several reasons support the Court's decision that the Indians' fishing opportunity could be limited to as few as half the fish. First, the parties were each sovereigns with equal dignity in the negotiations. Although the Indians were more numerous than non-Indians in the territory and all parties understood that they would do most of the fishing, the Indians' grant of rights was not made relative to the number of fishers or interest in fishing by individuals represented by either sovereign. Now that Indians have been outnumbered[5/] and there is more pres-

5/ The record does not disclose actual numbers of Indian fishers at present. The figures used by the state and the fishing groups which challenge the Indians reflect only those Indians who fished at the time United States v. Washington was tried. At

(continued on next page)

sure by non-Indian individuals to fish, the same principle dictates no greater rights for non-Indians. The tradition of Indian sovereignty, the backdrop against which treaties must be read, McClanahan v. Arizona State Tax Commission, 411 U.S. 164 1973), requires that tribal treaty rights continue to be analyzed as the rights of the succeeding political entities rather than as the several rights of constituent individuals. Id., 411 U.S. at 481. Second, the Court supported its finding as to the intent of the parties by reference to documents and expert testimony and to treaty era dictionaries for the definition of "common." 6/

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that point, Indian fishing had been vigorously suppressed by state action, and many Indians who fished off-reservation, other than as a part of the "all citizen" fishery, were considered to be fishing illegally. See Joint App. 115, 122, 128, 143, 144, 158, and 170-71.

6/ The State has suggested that it would have been more appropriate for the Court to have utilized notions of English common law which employed a concept known as a "common of piscary." State Br. 48-53. For a number of reasons that concept is not useful here: (1) it defined rights of individuals in a public resource vested in the government, rather than rights which exist as a result of reservations or grants in transactions between sovereigns. (2) The Indians should not be held to have understood the niceties of the English

(continued on next page)

Any allocation to less than an equal opportunity would have been untenable. If the tribes had ceded half, rather than virtually all, of their territory to the United States as suggested by one Indian negotiator, their remaining reservation would have carried with it the right to an exclusive fishery in half their former territory. Menominee Tribe v. United States, 391 U.S. 404 (1968); Alaska Pacific Fisheries v. United States, supra. But the United States treaty negotiators persuaded the Indians that they would be in a more advantageous position by retaining only small, residential tracts, and reserving the right to fish "in common with the

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common law. Indian treaties are to be construed as they understood them and "as justice and reason demand. . . without regard to technical rules." United States v. Winans, 198 U.S. 370, 380-8 (1905); Jones v. Meehan, 175 U.S. 1, 10-11 (1899); Choctaw Nation v. Oklahoma, 397 U.S. 620, 630 (1970). (3) The common law in this area was the subject of considerable confusion in terminology. State Br. 50 n. 28; see also Tribes' Br. As such, ambiguities in construction of reserved rights must be resolved in favor of the Indians. United States v. Winters, 207 U.S. 564 (1908); Seufert Bros. v. United States, 249 U.S. 194, 199 (1919)(rejecting "the artificial meaning which might be given [the treaty] by the law and by lawyers.").

citizens" at all their usual and accustomed places throughout the vast ceded area. (Joint App. 330). For the reserved right to fish in common with citizens at usual and accustomed places to be better than an exclusive right to fish in half of the areas formerly claimed by Indians, Indians could not be relegated to less than an opportunity to take half the fish destined for those places.

If the treaty reserved right to fish was to fulfill its purpose, the Court had to fashion an equitable remedy broad enough to assure that the equal allocation of fishing opportunity was effective but narrow enough to prevent substantial disruption of resource management. These goals were correctly met by an injunction preventing the state from adopting or enforcing

> any regulation which effectively limits the harvest by treaty tribes on future runs unless the state's regulatory scheme provides an opportunity for tribes to take, at their usual and accustomed fishing places, by reasonable means feasible to them, an equal share of the harvestable number of each species of fish that may be taken by all fishermen, provided that for the present time defendants shall not be required to achieve mathematical precision in so allocating the fish.
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> (Joint App. 223).

D. The Equal Protection Clause Does Not Bar Enforcement of Indian Treaty Rights by Allocation.

The Washington Supreme Court held, in No.77-983, that the Equal Protection Clause of the Fourteenth Amendment forbids allocation of fishing opportunity or creation of any special rights for Indians. Washington State Commercial Passenger Fishing Vessel Ass'n. v. Tollefson, 89 Wash.2d 276, 571 P.2d 1373 (1977); Puget Sound Gillnetters Association v. Moos, 88 Wash.2d 677, 565 P.2d 1151 (1977). See also Purse Seiners Vessel Owners Association v. Moos, 88 Wash. 2d 799, 576 P.2d 205 (1977). That holding is manifestly incorrect.

This Court has regularly sustained legislation and treaties singling Indians out for special treatment. Just this term, in rejecting an argument that laws classifying on the basis of tribal membership are impermissible racial classifications, the Court held:

> "[T]he unique legal status of Indian tribes under federal law" permits the Federal Government to enact legislation singling out tribal Indians legislation that might be otherwise constitutionally offensive. State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, No. 77-388, 47 U.S.L.W. 4111, 4121 (January 16, 1979) (citation omitted).

Representative of the numerous cases rejecting the equal protection argument exhumed here by Washington is Morton v. Mancari, 417 U.S. 535 (1974), where the Court upheld a federal statute providing employment preferences in the Bureau of Indian Affairs (BIA) for qualified Indians, 26 U.S.C. §472. The Court observed that the preference was "granted to Indians not as a discrete racial group, but rather as members of quasi-sovereign tribal entities." 417 U.S. at 554. Dismissing an equal protection argument, the Court stated:

> Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized.
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> 417 U.S. at 552.

See also Fisher v. District Court, 423 U.S. 382 (1976)(denial of Indian access to state courts not an impermissible racial classification); United States v. Antelope, 430 U.S. 641 (1977)(federal criminal statutes

do not violate equal protection guarantees by subjecting individuals to federal prosecution by virtue of their status as Indians. 7/

In deciding the Puyallup cases, this Court has specifically sustained the unique nature of Indian fishing rights under the treaties. In Puyallup I, the Court held that regulation of treaty fishing was permissible only when it was "necessary for conservation," 391 U.S. at 399, 401, and that "the measure of legal propriety of those kinds of measures is distinct from the federal constitutional standard concerning the scope of police power of the state." 391 U.S. at 401 n. 14.

Far from holding the special treaty fishing right of Indians unconstitutional, the Court has insisted that this right be afforded protection equal to that afforded the fishing rights of politically powerful non-treaty fishermen. Equal protection does not require that every person have

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7/ This term the Court denied certiorari on the question of whether equal protection principles are violated by a statute (25 U.S.C. §194) imposing the burden of proof "in trials about the right of property...upon the white person" whenever an Indian is a party on the other side. Wilson v. Omaha Indian Tribe, Nos. 78-160, 78-161, 47 U.S.L.W. 3326 (Nov. 13, 1978). Certiorari was granted on other issues in the case.

rights equivalent to those of every other, but rather that those rights which one does have be enforced equally, without constitutionally unjustifiable distinctions. In Puyallup I, this Court remanded the case for the state court to find whether the regulation was a "reasonable and necessary" conservation measure, warning that "any ultimate findings on the conservation issue must also cover the issue of equal protection implicit in the phrase 'in common with'." 391 U.S. at 403. This caveat led the state and its courts to believe that the Supreme Court had endorsed a meaning of "in common" which demanded equal rights for all, Indian and non-Indian. But when Puyallup II was decided, any apparent ambiguity in the equal protection directive of Puyallup I was clarified. The Court overruled a state court judgment that a ban on net fishing was a reasonable and necessary conservation measure which satisfied the Court's standards. Even though, as the state contended, the ban applied equally to all persons, Indians and non-Indians, the Court held the regulation to be discriminatory as to the Indians' treaty right to fish. 414 U.S. at 48. No doubt was left that equal protection analysis in this context requires consideration of the unique

circumstances (and different legal rights) of the parties. The Court suggested a solution in the form of an allocation of fishing opportunity between Indians and non-Indians.

Thereafter, in Puyallup III, the Court reversed the state Supreme Court's holding that the allocation of a specific percentage of fish to treaty tribes would violate the Equal Protection Clause, and sustained an allocation of 45% of the steelhead run in the river to the Indian net fishers.

In short, the Court has rejected both the general argument that legislation singling out Indian tribes is ipso facto based on impermissible racial factors, and the application of that argument to the specific facts of the treaties at issue here.

II. IN LIGHT OF THE STATE OF WASHINGTON'S FAILURE TO ADOPT REGULATIONS PERMITTING INDIAN FISHERMEN TO HARVEST THEIR TREATY SHARE OF FISH, THE DISTRICT COURT PROPERLY EXERCISED ITS EQUITABLE DISCRETION BY ENJOINING THE STATE FROM INTERFERING WITH THE COURT'S ALLOCATION.

Throughout American history, states have occasionally asserted a power to defy federal judicial power. On each occasion, this Court has staunchly reaffirmed the remedial powers of Article III courts to vindicate federally protected rights, "anything in the Constitution or laws of any State to the Contrary notwithstanding." See, e.g., Abelman v. Booth, 62 U.S. (21 How.) 506 (1859); Cooper v. Aaron, 358 U.S. 1 (1958). Without the capacity to provide effective relief to litigants, the exercise of jurisdiction by a federal court would be inconsistent with Article III. Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 38 (1976). The court's power to resolve the merits flows from its responsibility effectively to resolve "cases and controversies," Marbury v. Madison, 1 Cranch (5 U.S.) 137 (1803). Failure to provide a necessary remedy strikes at the heart of the judicial function and cannot be reconciled with Chief

Justice Marshall's interpretation of jucicial power and responsibility.

Accordingly, once the District Court resolved the merits of the controversy - by holding that the defendants had violated tribal treaty rights to a fair apportionment of the fish that normally would pass through the tribes' usual and accustomed off-reservation fishing stations - the Court was obligated to afford plaintiffs an effective remedy. Marbury v. Madison, supra; Bivens v. Six Unknown Agents, 403 U.S. 388 (1971); United States v. Richardson, 418 U.S. 166, 191 (1974) (Powell, J., concurring); Jacobs v. United States, 290 U.S. 13 (1933). Moreover, as the Court of Appeals observed, the enforcement of the tribal fishing rights presented no remedial issues that had not previously been resolved by this Court in related areas of the law. See, e.g., Brown v. Board of Education (II), 349 U.S. 294 (1955), Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), and Milliken v. Bradley (II), 433 U.S. 267 (1977) (school desegregation); Reynolds v. Sims, 377 U.S. 533 (1964) (re-apportionment); Hutto v. Finney, 57 L.Ed.2d 522 (1978) (cruel and unusual prison conditions); Hills v. Gautreaux, 425 U.S. 284 (1976) (housing); Lemon v. Kurtzman, 411 U.S. 192 (1973) (religious aid to public schools).

Relying on the principles of those cases, the district court originally entered a non-intrusive order requiring state officials to issue regulations necessary to assure the tribes, who had prevailed in the liability phase of the lawsuit, their fair apportionment of fish. As time went on, however, it became increasingly clear that the state would not implement the federal court judgment.[1/] The district court thereupon undertook a carefully measured series of additional approaches, before finally withdrawing the tribal allocation of fish from state regulation.[2/] The state and the commercial fishermen attack the present injunction as unlawfully requiring state officials to perform activities not authorized by state law, and as unlawfully invading the sovereign powers of the state over the fishery resource in Washington State. Neither of these contentions has merit.

1/ The State's contention that it "could not" implement the federal decree because it is prevented by state law from doing so, is answered by the Supremacy Clause. See, infra, at 29-35.

2/ The State concedes that "[t]he determinations by the Washington State courts...rendered it impossible to enforce" the initial federal decree, and that the more detailed orders of August, 1977 challengeed here were a response to those decisions. The circumstances leading to the August, 1977 orders are extensively detailed in the statement of the case in the briefs of the United States and the Indian tribes.

A. The District Court Properly Exercised Its Equitable Power to Protect Indian Fishing Rights, Notwithstanding the Absence of Any Statute Specifically Authorizing Enforcement of Indian Fishing Rights.

The District Court faced "the most concerted official and private efforts to frustrate a decree of a federal court witnessed in this century," as a result of state court orders enjoining state officials from enforcing the federal judgment by which they were bound. [3/]

The court could have directly ordered state officials to perform acts that the state courts had improperly enjoined, and imposed contempt sanctions of coercive fines, or imprisonment, for failure to do so. Instead, the Court dissolved its previous mandatory orders so as to avoid "a direct confrontation that would have raised serious questions of federalism." [4/] The court prohibited the state officials from interfering with the treaty allocations, and undertook, with expert assistance, the difficult and thankless task of exercising control over the fish harvest and treaty allocations. [5/]

3/ United States v. Washington, 573 F.2d 1123, 1126 (9th Cir. 1978).

4/ Id. at 1129.

5/ Memorandum Order and Preliminary Injunction, August 31, 1977, St. Pet. App. at 35.

Based on these facts, amici suggest that these cases do not raise the question whether the court exceeded its equitable or constitutional powers by directing state officials to perform functions that under state law they lack authority to perform, for the court has not done so.

Nevertheless, if the Court reaches the question, long-settled law makes clear the power of the federal court to enforce, under equitable principles, rights guaranteed by federal law notwithstanding any contrary provision of state law.

The Supremacy Clause is a complete answer to the objection of the state and commercial fishermen: it establishes "this Constitution, and the Laws of the United States...and all Treaties made...under the Authority of the United States" as the "Supreme Law of the Land,...any thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Constitution, Art. VI (emphasis added). State officials, and state judges, are bound by the Supremacy Clause. Cooper v. Aaron, 358 U.S. 1 (1958).

It is a settled principle that federal courts may enjoin state officials from using power that has been delegated to them, or require state officials to undertake tasks

not authorized or forbidden them by state law, when necessary to effectuate decisions on the merits. See, e.g., North Carolina Board of Education v. Swann, 402 U.S. (1971) (invaliding state anti-busing statute); Griffin v. Country School Board of Prince Edward County, 377 U.S. 218 (1964) (ordering levy of a tax); Bush v. Orleans Parish School Board, 194 F.Supp. 183 (E.D. La. 1961), aff'd sub. nom. Gremillion v. United States, 368 U.S. 11 (1961), id., 191 F.Supp. 871, aff'd 367 U.S. 908 (1961), id., 190 F.Supp. 871, aff'd 366 U.S. 212 (1971), id., 188 F.Supp. 916, aff'd 365 U.S. 569 (1961), Lee v. Macon County Board of Education, 267 F.Supp. 458, aff'd 389 U.S. 215 (1967), Poindexter v. Louisiana Financial Assistance Com., 296 F.Supp. 686, aff'd 393 U.S. 17 (1968), Hall v. St. Helena Parish School Board, 197 F.Supp. 649, aff'd 368 U.S. 515 (1962), South Carolina State Board of Education, 296 F.Supp. 199, aff'd 393 U.S. 222 (1968)(integration ordered notwithstanding state law effectively denying officials power to operate biracial schools); Labette County Commissioners v. U.S. ex rel. Moulton, 112 U.S. 217 (1884)(ordering tax levied in contravention of state law); Graham v. Folsom, 200 U.S. 248 (1906)(ordering compliance with a contract by local officials notwithstanding state law forbid-

ding such compliance); Tacoma v. Taxpayers Of Tacoma, 357 U.S. 320 (1958) (municipality permitted to apply for federal license to dam waters despite state law withholding such power); Milliken v. Bradley (II), 433 U.S. 267 (1977) (ordering remedial expenditures of funds with no warrant in state law.) 6/ The contention that lack of state-granted authority renders federal enforcement impossible is contradicted directly by the Supremacy Clause. It is precisely this lack of authority that has often necessitated federal court enforcement of federally protected rights. Compare, e.g., Ex Parte Rice, 273 Ala. 712, 143 So.2d 848 (1962) (holding that Alabama state courts are powerless to order reapportionment), with Reynolds v. Sims, 377 U.S. 533 (1964) (affirming Alabama federal district court's

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6/ See also West Virginia ex rel. Dyer v. Sims, 341 U.S. 22 (1951), where this Court, faced with an argument based on a state court interpretation of the state constitution denying effect to federally protected rights, met the issue head-on by reading the state constitution differently than had the state court. In an opinion by Mr. Justice Frankfurter, the Court said, "[D]eference is one thing; submission... is another." Id. at 28. The interpretation of state law here, permitting the state to allocate fish except for the enforcement of federally protected rights is similarly without fair support. See generally Hill, The Inadequate State Ground, 65 Col.L.Rev. 943 (1965).

order to reapportion state legislative districts). An announcement by the State of Washington that, as a matter of state law, there is no authority to allocate fish to the treaty tribes can no more prevent effective remedy of tribal fishing rights than could North Carolina' announcement that, as a matter of state law, its officials had no authority to operate integrated schools. See North Carolina Board of Education v. Swann, supra. 7/ If the state intends to manage its fishery resource, the Supremacy Clause requires that it operate its fishery in conformity with federal treaty law, "anything in the...Laws of any state to the contrary notwithstanding." 8/

7/ As Chief Justice Burger there explained for a unanimous Court:

> [S]chool authorities have wide discretion in formulating school policy.... However, if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall. State policy must give way when it operates to hinder vindication of federal constitutional guarantees. 402 U.S. at 45. (emphasis added).

8/ Circuit Judge Henley has stated in a similar context, "[T]he obligation of the Respondents does not depend on what the Legislature may do.... If Arkansas is going to operate a penitentiary system, it is going to have to be a system that is countenanced by the Constitution of the United States." Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970), aff'd 442 F.2d 304 (8th Cir. 1971), aff'd sub nom., Hutto v. Finney, 57 L.Ed.2d 522 (1978).

Of course, when a state has directed certain of its officials to exercise portions of its plenary power, courts should ordinarily respect the state's own allocation of power and responsibility. 9/ But it defies reason, and the consistent jurisprudence of this Court, to assert that a state could thwart its constitutional responsibility to conduct its fisheries in a manner consistent with federal treaty rights by announcing, as a matter of "state law," that its officials had no power to do otherwise. North Carolina

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9/ See, e.g., Bell v. School Board of Powhatan County, 321 F.2d 494, 499 (4th Cir. 1963); Thaxton v. Vaughan, 321 F.2d 474, 477 (4th Cir. 1963); Wright v. Greensville County School Board, 309 F. Supp. 671, 677 (E.D. Va. 1970), rev'd on other grounds, 442 F.2d 570 (4th Cir. 1971), rev'd. 407 U.S. 451 (1972); Bradley v. School Board, 51 FRD 139, 142 (E.D. Va. 1970). These cases are cited by the commercial fishermen (Gillnetters Br. at 52) for the erroneous proposition that the state can escape altogether its plenary power and responsibility to operate its fisheries in conformity with federal law by announcing that no officials have the power to obey federal law. Missouri ex rel. Laclede Gas Light Co. v. Murphy, 170 U.S. 78 (1898); United States ex rel. Johnston v. County Court, 95 U.S. (5 Otto.) 769 (1878); and Board of Supervisors of Carroll County v. United States ex rel. Reynolds, 85 U.S. (18 Wall) 71 (1873), also erroneously cited by the Gillnetters for this proposition, are in fact cases holding simply that mandamus is not the correct remedy to enforce compliance by a state official with an unclear federal right. Indeed, at least one of these cases suggests that injunctive relief would be available to enforce such compliance. See United States ex rel. Johnson v. County Court, supra.

Board of Education v. Swann, 402 U.S. at 45; Cooper v. Aaron, 358 U.S. at 17; United States v. Peters, 5 Cranch (9 U.S.) 115, 136 (1809). The treaty right operates as a direct restraint on the state and its officials, "no matter what was said in local statutes." Id.; Ward v. Love County, 253 U.S. 17, 21 (1920). The District Court did not act improperly in requiring state officials to take measures necessary to enforce rights they had violated, despite contrary provisions of state law.

B. The District Court Properly Exercised Its Equitable Power to Protect Indian Fishing Rights by Removing the Treaty Allocation from Control of Recalcitrant State Officials, and Assuming Control of That Portion of the State Fishery.

The state has raised, but not briefed, the remedial question whether the district court's assumption of responsibility for allocating fishing opportunity to treaty fishers violates the Tenth Amendment or principles of of federalism. Amici suggest that the question need not be decided. Because the state concedes that it will undertake in good faith to enforce any treaty rights declared by this Court - and because all parties agree that such state administration is desirable - continued federal court management of the

fishery resource will not be necessary. In these circumstances the question is moot.

If the Court does reach the question, however, the orders of the District Court should be upheld.

The state has initial authority by virtue of its police power to regulate the taking of fish and game, Geer v. Connecticut, 161 U.S. 519 (1896). But the sovereign power of a state in this field must yield to an exercise of paramount federal power. City of Tacoma v. Taxpayers of Tacoma, 357 U.S. 320 (1958) (Congressional power, under the Commerce Clause, to authorize dams that will destroy existing runs of fish); First Iowa Hydro-Electric Co-Op. v. FPC, 328 U.S. 152 (1946) (same); Missouri v. Holland, 252 U.S. 416, 432 (1920) (preemption of state control over fish under treaty power).[10/]

10/ Congress has never sought to exercise, and this Court has never sanctioned, the scope of federal control over state schools, Dayton Baord of Education v. Brinkman, 433 U.S. 406, (1977), Milliken v. Bradley, 418 U.S. 717 (1974); police, Rizzo v. Goode, 423 U.S. 362 (1976), Kelly v. Johnson, 425 U.S. 238 (1976); or prisons, Hutto v. Finney, 57 L.Ed.2d 522 (1978), as has been common in the field of fish and game resources.

Even assuming that the Court's decisions concerning the scope of federal equitable power to displace local authorities in areas of sovereign state functions are directly applicable, those decisions support the carefully measured response of the district court to "the state's extraordinary machinations in resisting the decree." United States v. Washington, supra, 573 F.2d at 1126.

The governing principles are familiar. "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad...." Swann v. Charlotte-Mecklenburg Borad of Education, 402 U.S. 1, 14 (1971). The decree must be remedial in nature, Milliken v. Bradley (II), supra, 433 U.S. at 290, and the Court must tailor the scope of the remedy to fit the nature and extent of the state violation of supreme federal law. Dayton Board of Education v. Brinkman, supra, 433 U.S. at 420. Finally, the federal courts must take into account the interest of state and local authorities

in managing their own affairs, consistent with the Constitution. Milliken v. Bradley II, 433 U.S. at 291; Hutto v. Finney, 57 L.Ed.2d at 532 n. 9.

Clearly, principles of federalism prohibit federal courts from exercising the prerogatives of local officials except to remedy a violation of supreme federal law, and then only as a last resort, for only so long as is necessary. Milliken v. Bradley II, 433 U.S. at 291. Hutto v. Finney, 57 L.Ed.2d at 532 n. 9. Cf. Mitchum v. Foster, 407 U.S. 225, 238-42 (1972) (federalism does not limit judicial power to enforce civil rights under 42 U.S.C. §1983). However, the court below attempted for nearly three years to remedy the violation of federally protected treaty rights only to find the recalcitrance of state officials prevented any remedy less intrusive than the temporary displacement of state authorities. Compare Cooper v. Aaron, supra; Morgan v. McDonough, 540 F.2d 527 (1st Cir. 1976) (South Boston High School receivership). See also Hutto v. Finney, 57 L.Ed.2d at 532 & n. 9; Milliken v. Bradley II, 433 U.S. at 410; Reynolds v. Sims, supra. The District Court's remedy was precisely tailored to restore the victims of illegal conduct to the position they would have occupied in the absence of such conduct. Milliken v.

Bradley I, 418 U.S. at 744; Dayton Board of Education v. Brinkman, 433 U.S. at 420. As the Court observed just last term, in affirming a comprehensive order displacing the prerogatives of local officials,

> [S]tate and local authorities have primary responsibility for curing constitutional violations. If, however, "[t]hose authorities fail in their affirmative obligations... judicial authority may be invoked..." Once invoked, "the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies...." In this case, the District Court was not remedying the present effects of a violation in the past. It was seeking to bring an ongoing violation to an immediate halt. Cooperation on the part of Departmental officials and compliance may justify elimination of [federal court oversight] in the future, but it is entirely appropriate for the District Court to postpone any such determination until the Department's progress can be evaluated. Hutto v. Finney, 57 L.Ed.2d at 532 n. 9.

Where, as here, the necessity for displacing local authorities is "established by factual proof and justified by a reasoned statement of legal principles," Dayton Board of Education v. Brinkman, 433 U.S. at 410, principles of federalism do not bar such displacement.

Nor is the Tenth Amendment's reservation of non-delegated powers to the state implicated by a federal court judgment enforcing rights based on treaties enacted under the

exclusive treaty power, U.S. Constitution, Art. II, §2, cl. 2. Compare Milliken v. Bradley II, 433 U.S. at 291. Equally with the Fourteenth Amendment, the treaty power is a prohibition of unlawful state conduct. Because of the Supremacy Clause, and the clear delegation of the treaty powers to the United States by the Constitution, a state's claim of sovereignty based on the Tenth Amendment or general federalism principles cannot overcome enforcement of Indian treaty rights. Worcester v. Georgia, 31 U.S. (6 Peters) 515 (1832). Indeed, a decision to the contrary would require that Worcester, a cornerstone of constitutional law, be overruled. 13/

The District Court has not attempted to alter permanently the structure of local governmental entities, cf. Milliken v. Bradley I, supra, or to mandate a particular structure of state or local financing, cf. San Antonio Independent School District v.

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3 / The state of Washington's reply to the federal courts in these cases recalls Andrew Jackson's challenge to this Court after Worcester v. Georgia:

> John Marshall has made his decision.
> Now let him enforce it.

Morison, The Oxford History of the American People, at 450 (1965).

Rodriquez, 411 U.S. 1 (1973). Nor has it interfered in the functioning of a state agency on a broad, prophylactic basis, without regard to the necessity of carefully matching its remedy to suit the violation. Cf. Rizzo v. Goode, supra. It has, rather, sparingly and carefully used its equitable discretion, with due regard for the principles of federalism, to provide the only remedy that will effectively remove a condition that "offends the Constitution," and remedy those whose rights have been infringed. As such, the chosen remedy constitutes a valid and necessary exercise of its equitable jurisdiction, and should be affirmed.

III. THE STATE OF WASHINGTON MUST MANAGE AND REGULATE ITS FISHERIES SO AS TO ENSURE THAT FEDERALLY GUARANTEED FISHING RIGHTS ARE PROTECTED; STATE COURT JUDGMENTS PREVENTING AND OBSTRUCTING SUCH ENFORCEMENT ARE VOID UNDER THE SUPREMACY CLAUSE.

Amici have argued that the federal District Court was obligated to provide an effective remedy for defendants' violations of treaty fishing rights. Moreover, in light of the recalcitrance of state officials, the remedy chosen was consistent with settled principles of federalism and Tenth Amendment jurisprudence. As a necessary corrollary to those propositions, amici submit that the Washington state courts acted improperly by obstructing the enforcement of Supreme federal law in the cases on review in No. 77-983. By restraining state officials, as a matter of state law, from obeying a federal judgment and decrees that had been affirmed and rendered final by denial of certiorari in this Court, the state court acted in plain disregard of the requirements of the Supremacy Clause. Cooper v. Aaron, 358 U.S. 1 (1958); Abelman v. Booth, 62 U.S. (21 How.) 506 (1859); Prigg v. Pennsylvania, 41 U.S. (16 Pet.)

539 (1842). 14/

It is not surprising, and highly relevant, that the state's brief does not seek affirmance of the state court judgments, does not raise or even mention those judgments in its carefully drawn list of questions presented, and does not brief the propriety of the state court's assumption of jurisdiction over officials already bound by federal judgments and decrees. Nor does it contend that the state courts had power to adjudicate and destroy the rights of treaty tribes and treaty fishermen over whom it had not assumed jurisdiction. Indeed, the state concedes that the Washington Supreme Court may not rely on state law to obstruct enforcement of the rights estab-

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14/ There is another ground, as well, on which to reverse the state court decisions. Amici suggest that the constitutional provisions preventing the exercise of state jurisdiction over Indian tribes and their protector, the United States, prohibit exercise of state court jurisdiction to construe the rights of treaty tribes and their members when no tribal members are before the Court, and when the state court is advised that an action construing those rights is pending in a federal forum in which all interested parties may participate. Cf. Fed.R.Civ.P. 19(b) (indispensible parties). Although the Court has held that the Constitution does not deprive the state courts of all jurisdiction over off-reservation activities of Indians, Puyallup Tribe v. Washington Game Dept., 391 U.S. 392, 296-97 n. 1 (1968) (Puyallup I), and has sanctioned state court suits to construe treaty language when the treaty beneficiaries were before the state courts, id., those decisions do not support the state court's actions here.

lished in the federal actions:

> Whatever the decision of this Court, we will implement it. The state believes that after a decision by this Court it will be in a position to comply with the District Court orders...we do not believe the state could or would take a different point of view. Wash. Br. at 96.

The state's concession is well advised. This Court has consistently held that state courts may not rely on provisions of state law to block enforcement of federally protected rights, a rule compelled by the very language, and meaning, of the Supremacy Clause.

Thus, in Martin v. Hunter's Lessee, 1 Wheat. 304 (U.S. 1816), the Court established that a Virginia law providing for forfeiture of all lands of British subjects could not withstand a federal treaty providing that there would be no such confiscations.

In Prigg v. Pennsylvania, supra, and Abelman v. Booth, supra, the Court struck down state statutes which obstructed the right to re-capture fugitive slaves secured by federal statutory and constitutional law. In Ward v. Love County, 253 U.S. 17 (1920), the Court struck down a state law that prevented enforcement of Cherokee rights guaranteed by Congress. In Testa v. Katt, 330 U.S. 386 (1947), the Court held

that state law could not justify a state court's failure to enforce, and provide a forum for enforcement, of a federal statutory right. And in Antoine v. State of Washington, 420 U.S. 194 (1975), the court invalidated state laws conflicting with the exercise of hunting and fishing rights guaranteed by federal treaties. See also Dice v. Akron, C. & Y. R.R. Co., 342 U.S. 359 (1952) (rejecting Ohio claim that state rule, preventing full enforcement of federal rights, could be enforced); Graham v. Folsom, 200 U.S. 248 (1906) (invalidating state attempt to avoid Contract Clause rights by depriving municipality of power to comply); Labette County Commissioners v. United States ex rel. Moulton, 112 U.S. 217 (1884) (ordering city to levy tax to enforce federal right, despite violation of state law); General Oil Co. v. Crain, 209 U.S. 211, 228-29 (1908); Riggs v. Johnson County, 6 Wall. 166, 195 (U.S. 1867); Von Hoffman v. Quincy, 4 Wall 535 (U.S. 1866); Amy v. Supervisors, 11 Wall. 136 (U.S. 1870); Dick v. United States, 208 U.S. 340 (1908).

State courts may not interpret the federal Constitution, to render federal judicial power nugatory "[T]he federal judiciary is Supreme in the exposition of the law of the Constitution." Cooper v. Aaron, 358 U.S. at 18. Even less can they rely on state law to do so:

> If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution becomes a solemn mockery. United States v. Peters, 5 Cranch 114, 136 (U.S. 1809).

Where, as here, state law - as interpreted by state courts - prevents state officials from taking necessary steps to enforce federal court decrees by which those officials are lawfully bound, such state law is invalid. The state court judgments are invalid because they restrain defendants from obeying federal law.

CONCLUSION

The judgment and orders of the lower federal courts in Nos. 78-119 and 78-139 should be affirmed; the judgments of the state courts in No. 77-983 should be reversed.

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Respectfully submitted,

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